Atlas Metal Spinning Co. and Donald Machado, Petitioner and International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local Union #790. Case 20-RD-1691

February 14, 1983

DECISION AND DIRECTION

By Members Jenkins, Zimmerman, and Hunter

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a threemember panel has considered determinative challenges in a decertification election held on April 14, 1982,1 and the Hearing Officer's report recommending disposition of the same. The Board has reviewed the record in light of the exceptions and briefs and hereby adopts the Hearing Officer's findings,2 conclusions, and recommendations with respect to the challenge to the ballot of Nick Gorshen.3 However, we find, contrary to the Hearing Officer's finding, that as of the date of the election Beverly Zangrillo had a reasonable expectancy of recall in the near future. Accordingly, we overrule the challenge to Zangrillo's ballot.

The Employer is a manufacturer of metal cookware. Its business has in the past followed a cyclical pattern which has been reflected in changes in the size of the work force. The workload customarily begins to increase in July and peaks in December. A substantial decline in business occurs at the end of December or early January.

Beverly Zangrillo was hired in October 1980 and worked as a helper. She was laid off at the beginning of 1981 due to a decline in the workload. In mid-1981 Zangrillo was recalled from layoff and late that same year she was laid off again. The record indicates that the Employer has kept her on its payroll during periods of layoff. The record also indicates that the Employer has afforded Zangrillo (as well as other employees on layoff) the opportunity to maintain her membership in the Company's

health insurance plan at her own expense. Zangrillo has availed herself of this opportunity.

A reasonable expectancy of recall in the near future entitles an employee on layoff to vote in a representation election. *Higgins, Inc.*, 111 NLRB 797, 799 (1955). The objective factors which the Board employs to determine whether an employee possesses such an expectancy include the employer's past experience, the employer's future plans, the circumstances of the layoff, and what the employee was told about the likelihood of recall. *High Energy Corporation*, 259 NLRB 747, 761 (1981).

As noted above, the Employer's business is cyclical in nature. The record indicates that in the past layoffs have accompanied slack periods. However, there is no suggestion that any of these layoffs were permanent. In fact, Richard Bielby, the Employer's assistant director, testified that in both 1980 and 1981 the Employer recalled all laid-off employees. What is more, Zangrillo was among those employees who were laid off and recalled in 1981. Although there was testimony that the Employer's economic condition became worse in 1982 than in prior years and that additional layoffs had occurred subsequent to that of Zangrillo, this evidence is unpersuasive here. The test for determining expectancy of recall is the situation as it existed at the time of the election. Thomas Engine Corporation and Upshur Engine Co., Inc., d/b/a Tomadur, Inc., 196 NLRB 706 (1972). The layoffs subsequent to that of Zangrillo took place after the election; the testimony regarding the Employer's economic situation referred to the situation as of the date of the hearing, 2 months after the election. There is no evidence that Zangrillo was informed of impending layoffs or the Company's deteriorating economic situation between the date of her layoff and that of the election. Thus, neither the layoffs nor the Employer's economic status can be said to negate the reasonable expectancy of recall which the Employer's, as well as Zangrillo's, past experience necessarily generated.

That the Employer did not provide Zangrillo with a specific date on which to expect recall prompted the Hearing Officer to conclude that she possessed no reasonable expectancy of recall in the near future. However, a laid-off employee need only have a reasonable expectancy, not a definite date, of recall at the time of election. Given the Employer's past experience with layoffs, there was some likelihood of Zangrillo's recall within as little as 2 or 3 months. Moreover, the Employer took measures which anticipated Zangrillo's return. At the time of the layoff, Bielby informed Zangrillo she would be recalled "whenever work picked up." Throughout her layoff, the Employer kept Zan-

¹ The election was conducted pursuant to a Decision and Direction of Election. Of approximately 27 eligible voters, 25 cast ballots. The tally was: 12 for, and 8 against, the Union; there were 5 challenged ballots, 3 of which were overruled by the Regional Director in a Supplemental Decision issued on May 20, 1982.

² The Union has excepted to various credibility resolutions of the Hearing Officer. It is the established policy of the Board not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. The Coca-Cola Bottling Company of Memphis, 132 NLRB 481, 483 (1961); Stretch-Tex Co., 118 NLRB 1359, 1361 (1957). We find no basis for disturbing the credibility resolutions in this case.

³ Thus, we find that Gorshen was not a supervisor within the meaning of Sec. 2(11) of the Act and that the challenge to his ballot should be, and it hereby is, overruled.

grillo on its payroll. In addition, the Employer permitted Zangrillo to maintain her health insurance coverage, albeit at her own expense. Such an action apparently had the advantage of facilitating reentry to the group plan upon recall. It also manifests her continued interest in the terms and conditions of employment. Delta Pine Plywood Company, A Division of Delta Industries, Inc., 192 NLRB 1272, fn. 1 (1971).

We conclude that Beverly Zangrillo had an expectancy of recall in the near future and, more-

over, that this expectancy was a reasonable one. We therefore overrule the challenge to her ballot.

DIRECTION

It is hereby directed that the Regional Director for Region 20 shall, within 10 days from the date of this Decision, open and count the ballots of Nick Gorshen and Beverly Zangrillo, as well as the other ballots to which challenges have been overruled by the Regional Director, and thereafter prepare and cause to be served on the parties a revised tally of the ballots upon which basis he shall issue the appropriate certification.